



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

0-2976
GERALD C. MANN
ATTORNEY GENERAL

Honorable H. L. Washburn
County Auditor
Harris County
Houston, Texas

Dear Sir:

Opinion No. 0-2976

Re: Should a vacancy result in the office of judge of the 113th District Court, Harris County, is the Commissioners' Court authorized to approve a claim for salary for the period of such vacancy for the official shorthand reporter appointed by the judge of said Court.

Your request for an opinion on the above matter has been received and carefully considered.

Article 2321 of the Revised Civil Statutes of Texas contains the following provisions:

"Each district and criminal district judge shall appoint an official court reporter who shall be a sworn officer of the court and shall hold his office during the pleasure of the Court."

Article 2325 of said statutes provides that an official court reporter shall receive certain fees for making transcripts of evidence, and Article 2326 thereof contains in part the following provision:

"The official shorthand reporter of each judicial district in this State and the official shorthand reporter of each county court, either civil or criminal, in this State, shall receive

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a salary of \$2,100 per annum, in addition to the compensation for transcript fees as provided for in this Act. Such salary shall be paid monthly by the Commissioners' Court of the County, out of the general fund, of the county on the certificate of the district judge."

Article 2326e of said statutes provides that the official shorthand reporter of each District Court in each county having a population in excess of 290,000 shall receive a salary of \$3,600.00 per annum in addition to the compensation for transcript fees.

Article 2324 of said statutes provides that the official court reporter shall attend all sessions of the Court, take shorthand notes of all testimony offered, together with all objections thereto, rulings and remarks by the Court, preserve said notes and make transcript of said evidence upon application therefor.

34 Texas Jurisprudence, Section 155, page 604 is as follows:

"The appointment of a deputy who is not within the constitutional provisions, and which is not for a particular duration of time, is coextensive in duration with the tenure of the officer appointing him, and, unless sooner removed, he holds until the expiration of the officer's term, and ceases to hold at that time unless he is reappointed."

In the case of Trinkle vs. State, 127 S. W. 1060, the Court of Criminal Appeals of Texas, in passing upon the validity of an indictment signed as foreman by one C. A. Green who was alleged to have been a deputy sheriff at the time the same was signed and returned,

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held that said Green was not a deputy sheriff at said time under the following facts, to-wit: L. A. Hatch testified that he was sheriff and appointed Green deputy sheriff on November 24, 1906; that Green qualified as such and had continued to act as such ever since; that he, Latch, was reelected sheriff in November, 1908, but did not recommission Green as deputy, and that Green has been acting under the original appointment. The Court of Criminal Appeals held that Green's appointment as deputy sheriff ceased to be effective at the end of the term of said Latch as sheriff.

In the case of Findlay, et al vs. Calloway, 246 S. W. 681 the Court was dealing with the right of a deputy public weigher to retain his office under appointment of the public weigher after the public weigher undertook to remove him and had appointed another deputy. The Court held that said appointment was not for a particular duration of time, and, unless the commission of said deputy was revoked or otherwise annulled, it was clear that he would continue coextensively in duration with the term of office of the public weigher.

In the case of Terrell vs. Sparks, 135 S. W. 519 the Supreme Court of Texas was dealing with the right of the then Attorney General of Texas to enter into a contract with one John L. Terrell to perform legal services for the State of Texas for a stated compensation. In holding that said employment was legal, the Supreme Court made the following statement which is applicable hereto, to-wit:

"Does the agreement between Terrell and the Attorney General, Lightfoot, confer upon Terrell the official character of Assistant Attorney General? If the effect of that

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agreement was to constitute Terrell an officer of the State, then his appointment and continuance in office would depend upon the continuance of the term of the Attorney General, who appointed him, and his authority terminated when the Attorney General qualified for his succeeding term and Governor Campbell went out of office by reason of the succession of the present governor."

It is our opinion, therefore, that when Judge Allen E. Hannay ceased to be Judge of the 113th District Court the official court reporter theretofore appointed by him as official court reporter for said District Court also ceased to be such official court reporter. We are not passing upon any right he may have to transcribe evidence and collect fees therefor in cases reported by him during the time Judge Hannay was upon the bench of said Court as a District Judge. It is our holding that the Commissioners' Court would not be authorized to approve a claim for salary for the period of any such vacancy for the official shorthand reporter appointed by the Judge of said Court.

Trusting that this satisfactorily answers your inquiry, we are

Very truly yours

ATTORNEY GENERAL OF TEXAS

By

Jas. W. Bassett
Jas. W. Bassett
Assistant

APPROVED AUG 29, 1942

Gerard B. Mann
ATTORNEY GENERAL OF TEXAS

JWB:MBR

